

## SENATE BILL No. 245

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### DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 4-6-9.2.

**Synopsis:** Selling gasoline below cost. Prohibits selling gasoline at a price lower than the retailer's cost plus 1.5%. Authorizes the attorney general to investigate suspected violations, institute legal action, and seek injunctive relief and civil penalties. Limits civil penalties to \$1,000 per incident.

**Effective:** July 1, 2004.

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**Waterman**

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January 8, 2004, read first time and referred to Committee on Commerce and Consumer Affairs.

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Introduced

Second Regular Session 113th General Assembly (2004)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2003 Regular Session of the General Assembly.

## SENATE BILL No. 245

A BILL FOR AN ACT to amend the Indiana Code concerning state offices and administration.

*Be it enacted by the General Assembly of the State of Indiana:*

SECTION 1. IC 4-6-9.2 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]:

### **Chapter 9.2. Sale of Gasoline Below Cost**

**Sec. 1.** As used in this chapter, "below cost" refers to the sale of gasoline by a retailer at a price that is less than cost, plus one and one-half percent (1.5%).

**Sec. 2.** As used in this chapter, "cost", as applied to the retailer, means:

(1) the actual current:

(A) delivered invoice cost; or

(B) replacement cost;

whichever is lower, without deducting customary cash discounts; plus

(2) any excise or sales taxes imposed on the gasoline after its purchase by the retailer and before the resale of the gasoline; plus

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(3) the retailer's cost of doing business at the location at which the gasoline is sold.

Sec. 3. As used in this chapter, "retailer" means any person, partnership, firm, corporation, or association, foreign or domestic, selling gasoline to the consumer and not selling the gasoline for the purpose of resale in any form.

Sec. 4. (a) An offer by a retailer, by way of posted price or indicating meter, to sell gasoline at a price that is below cost is prohibited.

(b) A retailer does not violate subsection (a) by selling gasoline:

(1) at the same price as; or

(2) at a legally posted price higher than;

the price at which a competitor is selling gasoline in the same market area and on the same day.

(c) A retailer does not violate subsection (a) by offering gasoline for sale at a price below cost as part of a promotion at an individual location for not more than three (3) days in any calendar quarter.

Sec. 5. With respect to a situation in which gasoline is allegedly being sold below cost, the attorney general:

(1) shall receive complaints; and

(2) may institute a legal action and seek the following:

(A) Injunctive relief as appropriate.

(B) A civil penalty under section 7 of this chapter.

Sec. 6. (a) Information that the attorney general obtains during an investigation under this chapter, including information obtained from a person who responds to the investigation and designates the information as confidential, is confidential for purposes of IC 5-14-3-4(a)(1) and must be maintained as confidential until the attorney general completes the investigation and determines a course of action concerning the alleged violation. Before an investigation is complete, the attorney general may not disclose any information obtained in the course of the investigation to a person not specified in subsection (c). Upon the completion of an investigation, the information obtained by the attorney general during the investigation becomes public under IC 5-14-3 only if:

(1) there is an agreed upon settlement; or

(2) charges are filed.

(b) Upon request, the attorney general shall make available to the public the compiled information concerning alleged sales of gasoline below cost. The compiled data may not identify particular persons or locations under investigation.

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(c) If the attorney general is required under this section to maintain the confidentiality of certain information, other individuals who are:

(1) designated in writing as agents of the attorney general for purposes of the investigation in which the information is obtained; and

(2) acting on behalf of the attorney general during the investigation;

shall maintain the confidentiality of the information under this section.

(d) A person who is served with:

(1) a request for information;

(2) a subpoena to give testimony orally or in writing; or

(3) a request or an order to produce books, papers, correspondence, memoranda, agreements, other documents, or records;

under this chapter may apply to any superior or circuit court for protection against abuse or hardship.

Sec. 7. If an investigation conducted by the attorney general under this chapter results in a finding that gasoline is being sold below cost, the attorney general may bring an action in a court in the county where the sale of the gasoline allegedly occurred. If the court finds that the retailer sold gasoline below cost in violation of section 4(a) of this chapter, the court may assess a civil penalty against the retailer. The amount of the civil penalty may not be more than one thousand dollars (\$1,000) per incident.

Sec. 8. Civil penalties collected under section 7 of this chapter must be deposited in the state general fund.

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